HANDWRITING TESTIMONY.

Recently a leading newspaper published a statistical article on forgeries, and made the statement that fifteen million dollars is the conservatively estimated illegal harvest of check forgers alone in this country.

It must not be imagined, however, that check forgeries constitute the only or the greatest losses by this criminal practice. The field is almost limitless, and one might say too profitable along other channels. Enormous as is the sum of fifteen million dollars lost by check forgeries, it is small when compared to the amount involving wills, deeds and other instruments. Unfortunately the number of detections and convictions in the past has been comparatively small, considering how many spurious documents of every description are in existence today.

Generally speaking, the law has thrown a more or less protecting arm around the forger. When the colonies gained their independence from England, they adopted, to a large extent, its system of jurisprudence. In those days the law did not permit of a comparison of writings or signatures to prove a forgery. Proof must be by other means of evidence. It was obviously difficult, therefore, under ordinary circumstances to prove whether an exhibit was spurious or genuine.

Up to about four years ago, the English practice was generally followed in the Federal courts of this country. It still obtains in many states, principally in the middle west and central states and in one or two commonwealths east of the Alleghany mountains. England herself sometime ago abolished her old common law rule.[1] Under date of January 23, 1913, a letter was written by Attorney General George W. Wickersham to Hon. Charles D. Clark, chairman of the Judiciary Committee of the United States Senate, urging the passage of a bill by Congress "relating to proof of signature and handwriting." Said Mr. Wickersham in part:

> "The rule of evidence in criminal cases in the Federal courts has been held to be governed by the State law in effect at

1. 17 and 18 Vict. Ch. 125, Sec. 27. (1854); Lawson Expert and Opinion Evidence. 371.

the time of the admission of the State into the Union, unless Congress has provided otherwise. The Federal courts cannot, therefore, allow either the Government or the defendant the benefit of subsequent changes in the State laws made in the interest of justice and as a result of enlightened views on the subject of judicial procedure.

"Correspondence with a large number of United States Attorneys discloses that the Federal courts in their districts are, because of the decisions above mentioned, adhering to the old common law rule with respect to the proof of handwriting. That rule prohibits the use of any genuine specimens of handwriting for purpose of comparison, unless such specimens are already in evidence, or admissible for other purposes. The reports of the various United States Attorneys show that the enforcement of this rule has resulted in many miscarriages of justice, particularly in cases against persons charged with sending obscene matter through the mails.

"This department has made repeated efforts to secure legislation on the subject, and I hope that you may be able to get favorable action of the Senate on the pending measure. Its adoption would remove the obstacles which now stand in the way of a successful prosecution of many Federal criminal cases, and would in no wise prejudice any right of the accused." [2]

The measure advocated by Mr. Wickersham was subsequently enacted into law.

Prior to this time, science had taken cognizance of the forgery situation. Handwriting experts were to be found here and there throughout the country. But they were few, because the law, as a whole, throughout the United States afforded them little or no opportunity to combat with their science the cunning of the penwielder.

But, as gradually the states broke away from the old English rule, expert testimony on questioned documents came into greater prominence and is now valued by the courts as a distinct profession. The process for this gradual but radical change may be traced in some of the decisions of the higher American courts that prohibited comparison of handwritings and which were ultimately found to lack conclusiveness.

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2. H. R., 20102. Approved Feb. 27, 1913.

The Supreme Court of North Carolina in 1820[3] adopted the English rule of not allowing the comparison of handwritings. An offender was under indictment for counterfeiting. That court held that a witness who had never seen the person write, nor received letters from him, could not testify to his writing. Again, in 1840, the Court adhered to the rule in an action for libel, and said: "Testimony, as to handwriting, founded on what is properly termed comparison of hands, seems to be now generally exploded."[4] Another jurist in rendering an opinion held that this rule was not altered by the fact that the standards of comparison were in evidence in the case for other purposes, and that, even in this case, it was improper to submit the two to the jury for inspection. "A jury," said the court, "is to hear the evidence, but not to see it."[5] And this ruling was approved in another case three years later.[5]

These were the conditions that confronted those who desired a comparison of hands, even at a comparatively late date, in a number of our states. However, we find a conflicting opinion by another jurist in 1812[6]—twenty-eight years prior to the above quoted "exploded" decision—stated in terms complimentary to his fellow citizens: "But when they can all write, that reason has no weight; and I believe it rare, indeed, at this time to find a juryman in this city, who cannot write."

It has been stated by one jurist, in rendering his decision in a notable case, that the minds of expert witnesses are "affected by that pride of opinion and that kind of mental fascination with which men are affected when engaged in the pursuit of what they call scientific inquiries."

Egotistic expressions and scientific inquiries are not akin. Science must deal with cold facts. Prejudice, favor or personal aggrandizement cannot be permitted to enter into the investigation and conclusion. An opinion is no evidence without an ade-

3. Harris Law of Identification, Sec. 389.

4. Pope *v.* Askew (1840), 3 Iredell (N. C.), 17.

5. Outlaw *v.* Hurdle (1853), 1 Jones L. (N. C.) 150; Otey *v.* Hoyt, 3 Jones L. (N. C.) 407.

6. McCorkle *v.* Binns (1812), 5 Binney (Pa.) 340; 6 Am. Dec. 420 (1812).

quate reason for such opinion. One person's impression of an incident is of no greater weight than that of another person unless the one has superior knowledge or skill, in which case that impression becomes evidence of great materiality.

It must be conceded, the handwriting of an individual is the best means of identification. Every dollar in every bank and the best proof of title to property depend upon writing. Faces, dispositions, habits of individuals may radically change; time dims the recollection; the testimony of those who are quite certain of a visual recollection of a person may be confused or even shattered by the questioning of a skilled lawyer; but the handwriting is the immutable evidence of the fact, and the skilled expert alone is the witness who is able successfully to distinguish and demonstrate its characteristics. An eminent jurist has expressed himself as follows: "Handwriting is an art concerning which correctness of opinion is susceptible of demonstration, and I am fully convinced that the value of the opinion of every handwriting expert as evidence must depend upon the number of those characteristics which appear or are wanting. * * * The appearance or lack of one characteristic may be accounted to coincidence or accident, but, as the number increases, the probability of coincidence or accident will disappear, until conviction will become irresistible." [7]

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7. Gordon's Case, 50 N. J. Eq. 397, 26 Atl. 268.